



Pullan Kammerloch Frohlinger
300 - 240 Kennedy Street
Winnipeg, MB R3C 1T1
Phone: 204-956-0490
Fax: 204-947-3747
Email: info@pkflawyers.com

HOW TO HAVE A HAPPY HOLIDAY SEASON

By Kevin Bolt, Lawyer, Pullan Kammerloch Frohlinger

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INTRODUCTION:

With the holiday season, office parties are on the horizon. They are a wonderful way to celebrate the holiday season and to thank employees for their hard work over the previous year. Unfortunately, every year seems to bring to light recurring problems resulting from improperly managed office parties.

Historically, overindulgence usually resulted only in embarrassment for the parties involved when they came to work the next day. This however has changed over the years as Canadian courts have begun to impose legal liability on office party hosts, who fail basic steps to protect, not only employees who attend but members of the public as well. As such, any organization hosting an office party must take care to protect itself from potential liabilities. The most common areas of legal liability following an office party arise out of sexual harassment complaints and motor vehicle accidents involving intoxicated employees. This article will only suggest steps an organization should consider taking to reduce the risk of legal liability for motor vehicle accidents involving intoxicated employees. This article is not intended as a substitute for specific legal advice. If any questions or concerns arise as a result of reading this article, please contact the lawyers at Pullan Kammerloch Frohlinger for further specific advice.

Canadian courts have established that there is a duty of care owed by an employer hosting an office party, not only to the employee but as well to any innocent third party who may be injured as a result of a traffic accident caused by an impaired employee. Canadian courts have suggested that the duty of care owed by an employer hosting an office function is greater than that of a social host and is closer to that imposed on a commercial establishment. A commercial establishment has a heightened duty to protect intoxicated individuals and the public.

In the result, when considering your organization's liability towards employees and the general public for actions resulting from an event hosted by your organization, you should consider your organization's duty of care is heightened to that of a "commercial host" as opposed to a "social host".

Many organizations establish general guidelines for hosting office functions, not only during the holiday season. For those who have, this is a good time of year to "dust off" these guidelines and to reinforce the policy to the managers in your organization. This will not only remind existing managers of the guidelines but will educate new managers who have joined your organization in the past year. You may wish to review the suggestions contained in this article for purposes of updating your existing general policy.

For organizations without current guidelines for hosting social functions, you should consider establishing a general guideline (we can help). In the interim, this article hopefully will provide you with “rules of thumb” to follow during this holiday season.

PRECAUTIONS:

Some of the precautions which you should consider when hosting a social function for your employees includes the following:

- The bar at the function should offer an array of non-alcohol choices for your employees.
- An attempt should be made to limit the amount of alcohol that is available per employee. To do this, some employers will issue “drink tickets” to each employee. The number of tickets issued is determined partly by length of the event and whether food is to be consumed at the function. Once an employee utilizes all of the allotted tickets, the intention would be that the employee would then have to purchase any further alcohol on a “cash basis”.
- Consider having a professional bartender. The bartender should know that your organization fully endorses him or the bartender’s refusal to serve alcohol to persons who appear to be impaired.
- Consider holding the party at a hotel and arrange for discounted rooms to be available for those who prefer to spend the night at the hotel as opposed to driving home.
- Consider closing the bar approximately one hour prior to the time at which the function is to end. During this hour, coffee, tea and snacks should be available for consumption prior to leaving the function.
- Watch for employees who appear to be impaired. A meeting with management staff advising that they are “designated observers” should be held prior to the function. Advise these “designated observers” that they should not consume alcohol themselves and provide them with instructions to not only caution employees who appear to be overindulging in alcohol but as well, to arrange for a taxi or other method of transport for them. In that regard, please recall in the City of Winnipeg, Operation Red Nose, a non-profit organization, is available during the holiday season. The phone number for this organization is 947-NOSE. This organization arranges for two persons to come to your function, pick up the employee and then drive the employee and employee’s vehicle back to their residence. There is not set fee for this service but rather donations in support of Operation Red Nose may be made. A typical donation is in the \$15.00 - \$20.00 range.
- Consider providing taxi cab slips to employees for use. If slips are not made available, your “designated observers” should be given the authority to arrange for a taxi to take an impaired employee home at your organization’s expense.
- The availability of either slips or paid taxis should be communicated in writing to your employees prior to the function. In addition, an announcement to this effect should actually be made at the function itself.

- Employees should be advised, prior to the function, that they are not required to attend the function.
- Some organizations will advise employees, in writing, prior to the function of the conditions upon which the employees may attend the function. These conditions could include items such as employees accepting responsibility for their own alcohol consumption, moderating their intake of alcohol and full cooperation with your organization's efforts to ensure their safety.
- Consider having employees to turn in their car keys at the beginning of the function with the ability to reclaim their keys from one of the "designated observers" at the end of the evening who would have the ability to determine whether or not the employee is capable of operating a motor vehicle.
- You should not be reluctant to contact police immediately should an employee become unreasonable in their attempt to drive home or in the event a potentially impaired employee is attempting to leave or actually manages to leave your function unaccompanied.

This list is not by any means exhaustive and is intended to supplement not replace any existing precautions which your organization may already have in place.

COMMUNICATION:

Although many of the precautions noted above appear draconian, organizations have found that the precautions are much more open to acceptance by employees if they are communicated to the employees prior to the function. This allows employees the ability to determine whether or not they wish to attend the function based upon the precautions which will be in effect at the function. Accordingly, you should circulate, in writing, to your employees at least two weeks before the proposed function (or at least two weeks prior to the date upon which employees are intended to reply as to whether or not they wish to attend the function) a list of the precautions, together with management's endorsement to the effect that management wishes employees to have a good time at the function however that the precautions will be strictly enforced.

INSURANCE:

Our final comment relates to what happens if, despite all of the precautionary measures referred to above, an impaired employee manages to leave your function impaired and is involved in a motor vehicle accident resulting in injuries not only to the employee but also to a member of the general public. Prior to hosting the function, your organization's insurance policy should be reviewed to determine whether or not it includes coverage for injuries sustained by employees or the general public during activities conducted outside of the work place or during activities outside the normal scope of employment. If your review of the terms of your organization's insurance policy indicates that such activities are not covered, an amendment to your insurance policy is advisable.

CONCLUSION:

The intention of this article is not to put a damper on holiday events being hosted by your organization. The purpose of this article is hopefully to raise your organization's level of concern for its liabilities which may flow from hosting a function. Although a narrow view would seem to indicate that the main purpose is to control your organization's legal liability, your organization's primary goal should be to host a

function which provides a safe environment within which your employees can enjoy the function. If this general goal is followed, a by-product will be that your organization has also taken steps towards meeting their obligations as a responsible.

HAVE A WONDERFUL HOLIDAY SEASON!

This article offers general comments on legal developments of concern to businesses. Every effort has been made to ensure the accuracy and timeliness (as at November 24, 2008) of this information. These publications are written for informational purposes only and should NOT be relied upon as legal advice or opinions. The reader should always obtain legal advice from a qualified lawyer or other qualified professional, which will be responsive to the case or circumstance of the individual.

If you require further information, please contact **Kevin Bolt** at kbolt@pklawyers.com. This subject matter is provided for general information purposes only and is not intended to be relied upon as legal advice.